

directly affects their obligations and liabilities.

(b) Where a representative executes a lease on behalf of an Indian landowner or lessee, the lease must identify the landowner or lessee being represented and the authority under which such action is taken.

(c) All WSR leases must include the following provisions:

(1) The obligations of the lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status;

(2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(3) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 162.014;

(4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact BIA and the tribe with jurisdiction to determine how to proceed and appropriate disposition;

(5) BIA has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with § 162.589, to enter the leased premises for inspection and to ensure compliance; and

(6) BIA may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a BIA request to make appropriate records, reports, or information available for BIA inspection and duplication.

(d) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

(1) The lessee holds the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises; and

(2) The lessee indemnifies the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, re-

moval, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct.

(e) We may treat any provision of a lease document that violates Federal law as a violation of the lease.

**§ 162.543 May permanent improvements be made under a WSR lease?**

(a) A WSR lease must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity, in accordance with § 162.019. These facilities and associated infrastructure are considered permanent improvements. A resource development plan must be submitted for approval with the lease under § 162.563(h).

(b) If the parties agree to any of the following changes to the resource development plan after lease approval, they must submit the revised plan to BIA for the file:

(1) Location of permanent improvements;

(2) Type of permanent improvements; or

(3) Delay of 90 days or more in any phase of development.

**§ 162.544 How must a WSR lease address ownership of permanent improvements?**

(a) A WSR lease must specify who will own any permanent improvements the lessee installs during the lease term and may specify under what conditions, if any, permanent improvements the lessee constructs may be conveyed to the Indian landowners during the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee installs will:

(1) Remain on the leased premises upon the expiration, termination, or cancellation of the lease, in a condition satisfactory to the Indian landowners and become the property of the Indian landowners;

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(2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before installation of the permanent improvements; or

(3) Be disposed of by other specified means.

(b) A lease that requires the lessee to remove the permanent improvements must also provide the Indian landowners with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

### **§ 162.545 How will BIA enforce removal requirements in a WSR lease?**

(a) We may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense:

(1) In consultation with the tribe, for tribal land or, where feasible, with Indian landowners for individually owned Indian land; and

(2) Before or after expiration, termination, or cancellation of the lease.

(b) We may collect and hold the performance bond until removal and restoration are completed.

### **§ 162.546 What requirements for due diligence must a WSR lease include?**

(a) A WSR lease must include due diligence requirements that require the lessee to:

(1) Commence installation of energy facilities within 2 years after the effective date of the lease or consistent with a timeframe in the resource development plan;

(2) If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section, provide the Indian landowners and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;

(3) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accord-

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ance with the design standards in the resource development plan; and

(4) Repair, place into service, or remove from the site within a time period specified in the lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season).

(b) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § 162.592.

### **§ 162.547 How must a WSR lease describe the land?**

(a) A WSR lease must describe the leased premises by reference to a private or public survey, if possible. If the land cannot be so described, the lease must include one or more of the following:

(1) A legal description;

(2) A survey-grade global positioning system description; or

(3) Another description prepared by a registered land surveyor that is sufficient to identify the leased premises.

(b) If the tract is fractionated, we will identify the undivided trust or restricted interests in the leased premises.

### **§ 162.548 May a WSR lease allow compatible uses?**

The lease may provide for the Indian landowners to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the WSR lease and consistent with the terms of the WSR lease. This may include the right to lease the premises for other compatible purposes. Any such use or authorization by the Indian landowners will not reduce or offset the monetary compensation for the WSR lease.